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MEMORANDUM OF UNDERSTANDING

between the

U.S. ARMY CORPS OF ENGINEERS

and the

U.S. ENVIRONMENTAL PROTECTION AGENCY

for the preparation of the

NANUSHUK PROJECT ENVIRONMENTAL IMPACT STATEMENT



I. INTRODUCTION AND PURPOSE

This Memorandum of Understanding ("MOU") sets out the terms of cooperation between the U.S. Army Corps of Engineers ("Corps") and the U.S. Environmental Protection Agency ("EPA"), in the development of an Environmental Impact Statement ("EIS") and other related documents for the proposed Nanushuk development project.

The project involves construction and operation of an oil and gas development located in the Alpine C and Nanushuk reservoirs, located on the eastern edge of the Colville River Delta, approximately 7.5 miles northeast of Nuiqsut, Alaska. The project is known as the Nanushuk project and is hereafter referred to as the "Project".

The purpose of this MOU is to define terms of cooperation, roles and responsibilities in the EIS process consistent with 40 CFR 1500, *et seq.* The EIS and other related documents will comply with all provisions of the National Environmental Policy Act ("NEPA"), as amended, and applicable regulations (especially 40 CFR Part 1500, *et seq.*, and 33 CFR Part 325, App. B) and guidelines relating to NEPA, together with all applicable local and State laws. Armstrong Energy, LLC, ("Applicant") is the proponent of the Nanushuk Project.

II. GENERAL PROVISIONS

1. The Corps is the lead federal agency for the EIS as defined at 40 CFR 1508.16. The Corps shall manage activities relating to the project in an expeditious manner and in conformity with applicable laws and regulations.
2. The EPA is a Cooperating Agency for the EIS as defined at 40 CFR 1508.5. The Cooperating Agency has the responsibility to assist the Lead Agency by participating in the NEPA process at the earliest possible time; by participating in the scoping process; in developing information and preparing environmental analyses including portions of the EIS for which the Cooperating Agency has special expertise; and in making available staff support at the Corps' request to enhance the Corps' interdisciplinary capabilities. The EPA will carry out any activities relating to the Project in an expeditious manner and in conformity with applicable laws and regulations.
3. The Corps and EPA recognize that a third-party contractor ("Contractor") has been retained by the Applicant to provide supportive expertise, personnel, and technical capabilities required for preparation of the EIS and related documents. A separate Memorandum of Agreement between the Corps and the Applicant was signed on December 11, 2015 and provides the procedures to be

followed by the Contractor in the development of the EIS. The Contractor was selected in accordance with Corps Regulatory Guidance Letter 05-08 and 40 CFR 1506.5. Any subcontractors retained by the Contractor will be subject to the requirements of 40 CFR 1506.5.

4. The Corps and the EPA agree to:

a. Provide review at all substantive phases of the EIS preparation, which include, but are not limited to:

- (1) data gap analysis,
- (2) baseline data,
- (2) scoping,
- (3) development of alternatives,
- (4) review of technical reports,
- (5) impact analysis,
- (6) Preliminary Draft EIS,
- (7) Draft EIS, and
- (8) Final EIS.

At the Corps' discretion, the Applicant may be given the opportunity to participate in such reviews to ensure that technical information directly related to their proposed project is accurate and complete. The Corps may preclude review by other interested parties until the Draft EIS is released to the public for comment. The Corps will use the environmental analyses and recommendations of the agencies as deemed appropriate by the Corps, consistent with the Corps' responsibilities as the lead federal agency.

b. Regulations define certain review periods for specific work products. For other work products, the EPA will provide comments directly to the Corps within specified timeframes as work products are developed. The EPA will have a minimum of five weeks to review the Preliminary Draft EIS.

c. Designate one representative as a primary point of contact (POC) for the EIS (Enclosure 1), with one alternate POC who would act for the designated POC when they are unavailable. The designated POC and/or their alternates shall meet regularly until the end of the EIS process on a schedule established by the Corps or as requested by a Cooperating Agency. In order to make the meetings as efficient as possible, the Corps prefers that agencies limit meeting participants to no more than two per agency.

d. Have their respective representatives attend regular Cooperating Agency meetings for the purpose of increasing communication and receiving comments, as may be required by law, in preparation of the EIS. Agency participation may occur via remote methods such as telephone calls or webinars, if agency staff are constrained by travel policies or limited budgets.

e. Throughout the EIS development process, the Corps may find it necessary to develop subgroups for specific resource topics related to the EIS. The Corps will invite the EPA and, if appropriate, the Applicant to participate in the subgroup, if applicable.

5. In addition to discharging the general obligations for cooperating agencies listed under CFR 1501.6(b), as resources allow, the EPA intends to:

- a. Attend and participate in the cooperating agency meetings, either physically or via teleconference.
- b. Where appropriate, attend and participate in meetings with tribal governments, stakeholders, and the general public, to ensure its own independent tribal consultation and public participation obligations are met.
- c. Advise the Corps on the EPA's statutory and regulatory responsibilities as well as any EPA regulations relevant to the scope of the Nanushuk EIS, and assist the Corps in preparing or reviewing documentation regarding these requirements for inclusion in the Nanushuk EIS.
- d. Provide a single consolidated set of written comments to Corps on the Preliminary Draft, Draft, Final Nanushuk EIS and other related documents, within the durations that are specified in the attached schedule, being aware that the Corps may change the start date of a review period if documents are completed sooner or later than shown on the schedule (Enclosure 2)
- e. Where appropriate, invite the Corps to participate in any meetings to be held by the EPA with external parties concerning the Nanushuk EIS.

### III. GENERAL PROCEDURES

1. The Corps established a project schedule pursuant to 40 CFR 1501.8(a) (Enclosure 2). At the Corps' direction, the Contractor will submit an EIS development plan which shall include specific tasks and subtasks to the Corps, the Cooperating Agencies, including the EPA, and the Applicant. The Corps, the Cooperating Agencies, and the Applicant will discuss the schedule of milestone dates for major EIS tasks and products. The Corps has final approval authority over any proposed schedule or modification thereof, with the understanding that mission requirements, funding, personnel, and other priorities of the Cooperating Agencies may affect their ability to fully participate in every phase of the EIS process.

2. The Corps will be responsible for organizing and conducting public scoping meetings as required by applicable regulations. The Contractor will provide administrative support and logistical arrangements for these public meetings. The Corps will be the recipient of all comments during scoping. The Contractor shall compile the comments, in coordination with the Corps, and provide a copy of the compiled comments to the Applicant, the Cooperating Agencies, including the EPA, and the Corps.

3. Any and all work performed by the Contractor in preparation of the EIS, including, but not limited to, draft documents and analyses, shall be submitted directly to the Corps. The Corps will then distribute the work products to the Cooperating Agencies, including the EPA, and the

Applicant, at the Corps' discretion, as appropriate. The Corps may, at its discretion, direct that certain work performed by the Contractor, be submitted directly to the Applicant and/or Cooperating Agencies, with a copy furnished to the Corps.

4. The Corps shall fully engage the Cooperating Agencies, including the EPA, and the Applicant (if appropriate) whenever a decision is to be made regarding substantive work or material to be included in the preparation of the EIS. In all instances involving questions as to the content or relevance of any material (including all data, analyses and conclusions) prepared by the Contractor, the Corps will make the final determination on the inclusion or deletion of any such material in documents produced for the EIS. If the Corps does not intend to incorporate comments or other information provided by the Cooperating Agencies, including the EPA, or the Applicant, the Corps shall discuss the issues with the parties to attempt to resolve the matter.

5. The Corps and the Cooperating Agencies, including the EPA, shall have access to and the opportunity to review all materials, procedures, and underlying data used by the Contractor in developing any and all reports, including, but not limited to field reports, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be reflected in the draft or final report submitted to the Corps and the Cooperating Agencies. Cooperating Agencies, including the EPA, shall not release to the public any information they are reviewing, commenting on, or providing for the EIS prior to publication of the Draft and/or Final EIS, unless such information is subject to applicable federal or state freedom of information law and is determined to be releasable. However, the Cooperating Agencies, including the EPA, may freely share such information with other Cooperating Agencies.

6. Joint meetings between the Applicant (if needed), one or more of the Cooperating Agencies, the Corps, and the Contractor will be held as often as necessary to ensure the timely and efficient preparation and development of the EIS. However, the Corps reserves the right to work directly with the Contractor. The Cooperating Agencies, including the EPA, will coordinate with the Corps prior to working on any significant issues with the Contractor. When meetings or conversations on significant matters occur between the Corps and the Contractor without the participation of the Applicant and/or Cooperating Agencies, the Contractor will disclose the meeting and its general subject at the next scheduled Cooperating Agency meeting. The Corps, in consultation with the Cooperating Agencies, may instruct the Contractor to meet with the Applicant, without the Corps' presence, when the topic to be discussed falls within the purview of a Cooperating Agency that will be present. The Corps reserves the right to consult directly and independently with other non-Cooperating Agency Federal, State, and local officials during the EIS preparation to assure compliance with NEPA, as well as with other applicable laws and regulations.

7. The Corps shall be responsible for directing the modification, exclusion, or inclusion of any data, evaluations, or other materials in the EIS, or in any other report being prepared by the Contractor or its subcontractors for the Project. The Corps, in consultation with Cooperating Agencies, including the EPA, will evaluate the information to ensure it is technically adequate and not biased. The Corps shall independently evaluate the EIS prior to its approval and take responsibility for its scope and contents.

8. The preparation and publication of all Federal Register notices related to the EIS will be the responsibility of the Corps. The Corps will coordinate preparation and publication of such notices with the Cooperating Agencies, including the EPA.

9. If a Cooperating Agency, including the EPA, hires an outside expert to assist in formulating their comments on either draft reports or the Preliminary Draft EIS document, they shall:

- a. Give the Corps notice prior to doing so;
- b. Ensure the expert signs a confidentiality agreement requiring that the information they are reviewing, commenting on and providing will not be released prior to a Draft and/or Final EIS being published. The agreement will be between the Cooperating Agency and the retained expert. The Cooperating Agency shall be responsible for enforcing the agreement; and shall not release to the public any information they are reviewing, commenting on, or providing for the EIS prior to publication of the Draft and/or Final EIS, unless such information is subject to applicable federal or state freedom of information law and is determined to be releasable;
- c. Ensure that retention of an outside expert does not delay or interfere with the Cooperating Agency's ability to comply with identified timelines for review and response. If a Cooperating Agency's need for or use of outside experts does not conform to the overall EIS schedule, it shall be the responsibility of the Cooperating Agency to make alternate arrangements with the Corps.

#### IV. DISPUTE RESOLUTION

1. Should significant differences exist between the Corps and the EPA, every effort will be made to resolve these differences, including using available alternative approaches to dispute resolution techniques. Issues that cannot be resolved at the staff level may be elevated to the Regulatory Division Chief for the Alaska District and the EPA Region 10 Office Director for resolution. The Regulatory Division Chief will render a final decision on the scope of the issues, analyses, or conclusions for inclusion in the EIS and ensure that any disagreements are documented in the EIS.

2. If the Regulatory Division Chief's decision is contrary to the position of the EPA, the Corps will define the differing positions clearly in the EIS. If so, the differing positions will be included in the EIS for the public review and comment.

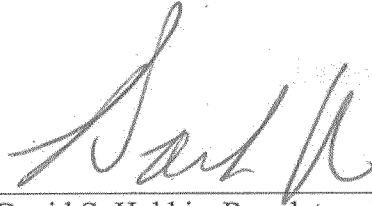
#### V. MODIFICATION

The MOU may be modified only by a written amendment agreed to, and signed, by both signatories of this MOU.

#### VI. MISCELLANEOUS



1. The Corps and Cooperating Agencies shall maintain the confidentiality of all information, documents, or material the Applicant designates as confidential and which meets the requirements of applicable law and regulations.
2. Nothing in this agreement shall be construed as altering or limiting either agency's responsibility or ability to act in accordance with all applicable Federal and State laws and regulations. Either agency's undertakings pursuant to this agreement are subject to the availability of funds.
3. This agreement does not take the place of the federal government responsibility to consult and coordinate with potentially affected federally-recognized tribal government on a government-to-government basis.
4. This agreement does not alter the EPA's responsibilities under NEPA and Section 309 of the Clean Air Act to conduct an official independent review of the Draft EIS and Final EIS during public comment periods of these documents.
5. Nothing in this MOU shall affect the obligations, commitments, and agreements by the Corps or EPA pursuant to other agreements between the Corps and other Cooperating Agencies.
6. The Corps or EPA, by prior written notice to the other, change its notification address or its designated representative. (See Enclosure 1 for a list of designated representatives.)
7. This MOU will be effective as of the last date signed below.
8. This agreement shall be interpreted in accordance with Federal Law.
9. The Corps does not permit the use, reproduction, copying or redistribution of its brands, trademarks, and logos without written permission from the Department of the Army. The Applicant will obtain prior approval of all press releases, published advertisements, or other statements intended for the public that refer to this agreement or to the agencies, or the name or title of any employee of the agencies in connections with this agreement.
10. This MOU constitutes the entire agreement among the Corps and the EPA with regard to the EIS process for the Nanushuk Project.



David S. Hobbie, Regulatory Division Chief  
Alaska District, U.S. Army Corps of Engineers

9-30-16

Date



R. David Allnutt, Director  
Office of Environmental Review and Assessment  
U.S. Environmental Protection Agency, Region 10

9/12/16

Date

**Enclosure 1**

EPA Point of Contact:

Gayle Martin  
222 W. 7th Avenue, Box 19  
Anchorage, AK 99513-7588  
907-271-5097  
martin.gayle@epa.gov

Alternate EPA Point of Contact:

Jennifer Curtis  
222 W. 7th Avenue, Box 19  
Anchorage, AK 99513-7588  
907-271- 6324  
curtis.jennifer@epa.gov



No.	Task Name	% Complete	Description	Date	Status	Summary
1	MCA Published in FR	100%	1 d	Thu 2/20/16	Completed	
2	Scoping Comments Period and Public and Agency Meetings in Napaun, Barrow, Anaktuvuk, and Fairbanks	63%	8d 4	Fri 2/25/16	In Progress	
3	USACE Prepares and Distributes MOA to Cooperating Agencies	68%	6d 3	Mon 2/29/16	In Progress	
4	Applicant Provides USACE with Sufficient Information for Overall Purpose	100%	0 d	Fri 4/29/16	Completed	
5	USACE Finalizes Purpose and Need	25%	19 d	Mon 5/2/16	In Progress	
6	Cooperating agencies provide input on Data Gap Analysis	100%	0 d	Mon 5/2/16	Completed	
7	Cooperating agencies provide input on Data Gap Analysis	24%	23 d	Tue 5/3/16	In Progress	
8	Cooperating Agency Consensus on MOA	10%	40 d	Wed 5/4/16	In Progress	
9	Initial Agency Input on Alternatives and Proposed EIS Analytical Methodology	50%	11 d	Wed 5/18/16	In Progress	
10	Applicant Provides Technical, Logistical, Cost-Related Project Screening Criteria	9%	30 d	Fri 5/6/16	In Progress	
11	Agencies / Applicant Provide Comments and Input Regarding Alternatives and Scope of EIS Analysis	0%	20 d	Thu 5/19/16	In Progress	
12	USACE reviews and concurs with Data Gap Analysis	0%	5 d	Fri 6/3/16	In Progress	
13	USACE analyzes scoping summary report; determines issues to be addressed in the EIS	0%	23 d	Thu 6/2/16	In Progress	
14	Applicant provides updated oil spill modeling	0%	0 d	Wed 6/15/16	In Progress	
15	USACE finalizes reasonable range of alternatives to be evaluated in EIS	0%	22 d	Thu 6/16/16	In Progress	
16	Contractor submits USACE with Draft Ch. 1 (Purpose & Need)	0%	0 d	Fri 6/24/16	In Progress	
17	USACE Review of Ch. 1 (Purpose & Need)	0%	15 d	Mon 6/27/16	In Progress	
18	Contractor submits scoping summary report	0%	0 d	Thu 6/30/16	In Progress	
19	Contractor provides USACE with Draft Ch.4 (Oil Spill Risk Assessment)	0%	0 d	Thu 8/11/16	In Progress	
20	USACE and Cooperating Agencies Review of Ch. 4 (Oil Spill Risk Assessment)	0%	20 d	Fri 8/12/16	In Progress	
21	Contractor provides USACE with Draft Ch. 2 (Alternatives)	0%	0 d	Mon 8/15/16	In Progress	
22	USACE and Cooperating Agencies Review of Ch. 2 (Alternatives)	0%	20 d	Mon 8/15/16	In Progress	
23	Applicant provides updated wetland delineation and ASA to include reasonable range of alternatives as well as cultural resources management plan	0%	0 d	Wed 8/31/16	In Progress	
24	Contractor provides USACE with Draft Ch.6 (Avoidance, Minimization and Mitigation) - to include Applicant's Draft Mitigation Plan	0%	0 d	Mon 12/12/16	In Progress	
25	USACE and Cooperating Agencies Review of Ch. 6 (Avoidance, Minimization and Mitigation)	0%	30 d	Tue 12/13/16	In Progress	
26	Contractor provides USACE with Draft Ch. 3 (Affected Env. and Env'l Consequences) - 3 sections at a time	0%	0 d	Mon 1/9/17	In Progress	
27	USACE and Cooperating Agencies Review Chapter 3 (Affected Environment and Environmental Consequences)	0%	90 d	Mon 9/26/16	In Progress	
28	Applicant provides updated BA and EFH Assessment	0%	0 d	Mon 11/6/17	In Progress	
29	Contractor Submits Preliminary Draft EIS	0%	0 d	Thu 3/7/17	In Progress	
30	Initiation of Consultation (Section 7, Section 106, EFH)	0%	20 d	Wed 3/8/17	In Progress	

The Gantt chart displays the timeline of the project tasks. The x-axis represents dates from February 2016 to March 2017. Each task is represented by a horizontal bar indicating its duration. Tasks are color-coded: blue for completed, green for in progress, and grey for pending or future tasks. Task 1 is completed by late February 2016. Task 2 is ongoing through mid-March 2017. Task 3 is completed by early March 2016. Task 4 is completed by late April 2016. Task 5 is ongoing through early May 2016. Task 6 is ongoing through early June 2016. Task 7 is ongoing through early July 2016. Task 8 is ongoing through early August 2016. Task 9 is ongoing through early September 2016. Task 10 is ongoing through early October 2016. Task 11 is ongoing through early November 2016. Task 12 is ongoing through early December 2016. Task 13 is ongoing through early January 2017. Task 14 is ongoing through early February 2017. Task 15 is ongoing through early March 2017. Task 16 is ongoing through early April 2017. Task 17 is ongoing through early May 2017. Task 18 is ongoing through early June 2017. Task 19 is ongoing through early July 2017. Task 20 is ongoing through early August 2017. Task 21 is ongoing through early September 2017. Task 22 is ongoing through early October 2017. Task 23 is ongoing through early November 2017. Task 24 is ongoing through early December 2017. Task 25 is ongoing through early January 2018. Task 26 is ongoing through early February 2018. Task 27 is ongoing through early March 2018. Task 28 is ongoing through early April 2018. Task 29 is ongoing through early May 2018. Task 30 is ongoing through early June 2018.

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